

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO
WESTERN DIVISION

MICHAEL S.POTTS,

Plaintiff,

Case No. 3:10 CV 1186

-vs-

DAVID OLDS,

Defendant.

MEMORANDUM OPINION
AND ORDER

KATZ, J.

Currently pending before the Court is Magistrate Vernelis K. Armstrong's Report and Recommendation ("R&R") on Defendant's motion to strike Plaintiff's sur-reply, and on Defendant's FED. R. CIV. P. 12(b)(6) motion to dismiss Plaintiff's claim that Defendant violated Plaintiff's *Fourteenth Amendment* due process rights by fabricating a police report. Doc. 44. The R&R recommends that this Court grant Defendant's motion to strike and deny Defendant's motion to dismiss.

Plaintiff did not object to the Magistrate's recommendation regarding Defendant's motion to strike. The Magistrate's well-reasoned recommendation is therefore adopted in part, and Defendant's motion to strike is granted. Doc. 40. *See Thomas v. Arn*, 474 U.S. 140, 149-52 (1985); *Crum v. Sullivan*, 921 F.2d 642, 645 (6th Cir. 1990); *Hillman v. Beightler*, No. 09-cv-2538, 2010 U.S. Dist. LEXIS 54408, at *9 (N.D. Ohio May 26, 2010).

Defendant timely objected to the Magistrate's recommendation that this Court deny Defendant's motion to dismiss. The Court reserves ruling on the motion to dismiss, Doc. 28, and grants Defendant to November 7, 2012 to file a brief not to exceed ten (10) pages in light of *United States v. Melendez*, No. 03-cr-80598, 2004 U.S. Dist. LEXIS 620, at *2-*5, *18-*28 (E.D. Mich. Jan. 20, 2004); *Frantz v. Village of Bradford*, 245 F.3d 869 (6th Cir. 2001); and *Darrah v.*

City of Oak Park, 255 F.3d 301 (6th Cir. 2001). Plaintiff is granted two weeks thereafter to file a response not to exceed ten (10) pages. The sole purpose for this additional briefing is to address whether, under the facts *sub judice*, Plaintiff's allegation that Defendant fabricated a police report states a claim for violation of Plaintiff's *Fourteenth Amendment* due process rights.

IT IS SO ORDERED.

s/ David A. Katz
DAVID A. KATZ
U. S. DISTRICT JUDGE